



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

July 8, 2020

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
Peggy A. LaGree, Treasurer

Cc: Terrence D. McCracken, Secretary of the Authority
Russel J. Stoll, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer
Karen A. Prendergast, Chief Financial Officer
Joyce A. Tomaka, Comptroller
Katherine A. Gillette, Associate Attorney
John J. DelMonte, Associate Attorney
Molly J. Musarra, Claims/Risk Manager

From: Margaret A. Murphy, General Counsel

Subject: Proposed Settlement for Richard and Kimberly Kaylor
Claim No. 2018-056

As General Counsel for the Erie County Water Authority (the "Authority"), I have been delegated the authority to settle any claim for \$5,000 or less without the approval of the Board of Commissioners (the "Board"). Any settlement above that amount must have Board approval.

On April 18, 2019, the Board received, as part of its [Agenda \(C-11\)](#), a copy of a Notice of Claim (Claim No. 2018-056) filed on April 1, 2019 by Richard and Kim Kaylor (the "Kaylors"), who reside at 614 Milson Parkway, Angola, New York. In their Notice of Claim, the Kaylors provided evidence showing the Authority had broken their sewer lateral when ECWA crews were sent to repair a water line break in front of their home on January 28, 2018. A few months after the ECWA crew repaired the break, the Kaylors began to notice problems with their sewers backing up. They suspected the problem could have been caused by the repair made by the ECWA crew and contact the Authority about the issue. Tony Alessi, the Authority's former Claims/Risk Manager questioned them as to why they thought the sewer issues related to the water line repair and whether they had contacted a plumber. At that point, the Kaylors had no proof their sewer problems were related to the repairs.

The Kaylor continued to have sewer problems until March of 2019. Between the time they first brought the matter to Mr. Alessi's attention and March 1, 2019, they had their sewer lines snaked and examined to determine the cause of the problem. However, it was not until March 4, 2019 when the street was open that the Kaylor sufficient facts to prove the Authority's culpability.

On March 1, 2019, they retained the services of McKillen Enterprises, Inc. ("McKillen"). After digging up their front yard, McKillen determined the problem was due to a break in the sewer lateral located within the public right of way. The Kaylor applied and paid for the necessary permits to open the street to make the repairs. The Kaylor have submitted to the Authority pictures and a video of the work performed by McKillen, along with the McKillen invoice. McKillen provided the Kaylor with an unsworn statement, verifying the sewer lateral was broken in two places directly under the location of where ECWA crew made the repairs in the previous year.

The Kaylor submitted their claims to their insurance carrier who assigned it to an investigator. They later received a letter denying their insurance claim on the ground the damages were not recoverable under their policy. The carrier's denial letter was made part of the Notice of Claim.

The Legal Department conducted a 50-H hearing on July 29, 2019. The Kaylor were told a decision regarding their claim would be made within two weeks. Shortly after the Authority issued its Declaration of Emergency, reducing the size of its on-site workforce and office staff, Mrs. Kaylor began to leave messages regarding the status of the claim.

On June 21, 2020, I contacted the Authority's Executive Engineer Len Kowalski to ask for his assistance in evaluating the merits of the claim and the reasonableness of the McKillen invoice. Mr. Kowalski then consulted with John Catanzaro, Director of Operations. Mr. Kowalski and Mr. Catanzaro reported to me that the ECWA crew was more likely, than not, the cause of the damage to the Kaylor's sewer lateral. Mr. Kowalski also stated that, in his opinion, the McKillen invoice was reasonable given the time and work performed to repair the lateral.

On June 21, 2020, I also assigned Associate Attorney Kate Gillette to research the accrual date for the claim and to determine whether the claim was still within the statutory period of limitations. After confirming with Ms. Gillette and reviewing her research, I have determined the Kaylor are still within the period for which they may lawfully commence a suit against the Authority. CPLR § 203 (g); *Bloomington, Inc. v. New York City Transit Authority*, 13 N.Y.3d 61 (2009). Additionally, both Ms. Gillette and I have reviewed the video of the 50-H hearing and agreed the Kaylor were forthright and credible.

I have spoken with both Mr. and Mrs. Kaylor and they have agreed to accept the following settlement, subject to the Board's approval:

- (1) After the Authority has confirmed the McKillen invoice submitted in the amount of \$7395.00 has been paid in full, the Authority will reimburse the Kaylor the sum paid to McKillen;
- (2) Because the Kaylor have not had the funds to restore the street or the front of their properties, the Authority will agree to restore the street and their property to that same conditions following the restoration performed by the Authority in 2018; and
- (3) The Kaylor will signed a General Release prior to the delivery of any settlement check.

I now recommend to the Board the proposed settlement, outlined above.